2010 WL 4652848 (Me.) (Appellate Brief)
Supreme Judicial Court of Maine.

FOXWELL AT KITTERY ASSOCIATES, Plaintiff and Appellee,
v.
Karen HILBOURNE, Defendant and Appellant.

No. YOR-09-600.
May 13, 2010.

Appeal

Brief of Appellee

Foxwell at Kittery Associates, David P. Chamberlain, Esq., Bar No. 3579, Law Offices of David P. Chamberlain, P.A., 465 Congress Street, 8th Floor, PO Box 66, Portland, Maine 04112-0066, (207) 775-0060, Attorney for Appellee.

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***1** NOW COMES the Appellee, Foxwell at Kittery Associates, by and through undersigned counsel, for its brief states and represents as follows:

A. FACTS OF CASE & PROCEDURAL HISTORY

Foxwell at Kittery Associates (hereinafter “Foxwell”) is a tax credit apartment complex that rents subsidized apartment units to low income individuals through project based Section 8 housing in conjunction with MSHA and HUD located at 21 Manson Avenue in Kittery, Maine that contains 50 apartment units. Foxwell incorporates herein Plaintiff's Exhibit 1 which is a Thirty (30) Day Notice of Termination and Notice to Quit that Foxwell served on the appellant, Karen Hilbourne, (a resident of 21 Manson Avenue, Unit 28 at Foxwell) through the property management company, Avesta Housing (hereinafter “Avesta”). (Appendix, pp. 29-38). The appellant, Karen Hilbourne, is a very problematic tenant that has an extensive history of harassing, disturbing and not getting along with other residents, guests, property management, police, maintenance workers and personal care attendants. The Notice of Termination sets forth seventy-three (73) incidents which have been ***2** documented in Ms. Hilbourne's file. (Appendix, pp. 29-38). Due to her continued and repeated behavioral misconduct, Foxwell decided to terminate her Lease in accordance with Paragraph 23 of the Lease for material noncompliance with the lease and for violations of Paragraph 13(e) and House Rules #1 and 3. (See Lease Agreement in Appendix, pp. 11-28).

A few examples serve to illustrate the conduct that Ms. Hilbourne engaged in that deprived other tenants of their rights to enjoy the apartment complex. On May 1, 2008 the appellant and a friend contacted the Kittery Police Department and falsely accused another resident, Bennett Sauer, of attempting to run the appellant and her friend over when, in fact, he was simply driving through the complex. (See Thirty Day Notice of Termination at p.29 of Appendix). In fact, the testimony of Bennett Sauer related to this false report by the appellant described how he was nearly arrested due to these false allegations. (Tr., Vol. II, pp. 51-55).

Another example of the type of behavior that the appellant engaged in involved a healthcare worker from Arcadia Health Services, Christiane Higgins. During the winter of 2008, the appellant systematically harassed Ms. Higgins to the point where Arcadia Health Services removed Ms. Higgins from providing services to two residents at Foxwell. Ms. Higgins provided services to two residents wherein she did light housekeeping, cooked meals, assisted with bathing, picking up the mail and provided other household duties that allowed those two residents to enjoy independent living within the Foxwell community. The appellant harassed Ms. Higgins by following her around the premises and further by spreading rumors saying that Ms.

Higgins was trying to steal people's identities, that she was dealing illegal drugs and that she was staying in various apartments throughout Foxwell among other allegations. (See testimony of Christiane Higgins, Tr., Vol. I, pp. 57-76). Ms. Hilbourne called the administrative offices of Arcadia Health Services and lodged a ***3** number of complaints against Ms. Higgins to the point where the supervisor Dawn Worcester became afraid for the safety of Ms. Higgins. (See testimony of Dawn Worster, Tr., Vol. I, pp. 22-49). Accordingly, Arcadia Health Services removed any and all workers from the Foxwell complex There are numerous other examples of similar type harassing behavior wherein the appellant harassed numerous other residents. (See testimony of Christiane Higgins, Tr., Vol. I, pp. 57-76 and Arcadia Supervisor Dawn Worster, Tr.,Vol. I, pp. 22-49).

Foxwell presented the testimony of a number of residents of the Foxwell complex that talked about various incidents wherein the conduct of Karen Hilbourne either affected them or other residents. (See testimony of Karen Welch, Tr., Vol. II, pp. 4-16, Elizabeth McFadden, Tr., Vol. II, pp. 16-24, Gwendolyn Damon, Tr., Vol n, pp.24-30, Bennett Sauer, Tr., Vol. II, pp. 35-55, Philip Elmo, Tr., Vol. II, pp. 70-81, 89, 93, Isabelle Irving, Tr., Vol. II, pp. 95-98 and Phyllis Russ, Tr., Vol. II, pp. 100-107). One incident involved the appellant calling the police on a resident and accusing that resident of trying to kill her with a knife when in fact the resident was simply playing a game called mumbly peg with a small pocket knife. (Tr. Vol. ID, pp 56-57). The appellant would pit tenants against tenants by spreading untrue rumors around the complex. She would accuse certain residents of trying to steal her identity, breaking into her apartment, sexually harassing her and peeking into her apartment windows. She had a habit of approaching new residents in the community room and tell them that there was significant illegal activity going on at the premises. (See testimony of Karen Welch, Tr., Vol. n, pp.4-15, and corroborating testimony of Helen Poisson, Tr., Vol. I, pp. 92-104). She would indicate that that activity would include drug use, people breaking into other peoples apartments and that the premises were generally unsafe. She additionally admitted to harassing a family to the point where they decided to vacate the premises. (See testimony of Phil ***4** Elmo, Tr., Vol. II, pp. 70-81).

The appellant did not vacate the premises at the expiration of the Thirty (30) Day Notice of Termination and Notice to Quit which terminated her lease and tenancy effective October 1, 2008. Accordingly, Foxwell filed a complaint for a Forcible Entry and Detainer in the York District Court dated October 2, 2008. (Appendix, p. 9), Because any such trials longer than 2 hours were required to be tried at the York County Superior Court, there was a delay in obtaining a trial date. Justice Fritzsche held a trial on April 21 and 22, 2009 at the York County Superior Court. On April 22, 2009 Justice Fritzsche rendered a judgment of Forcible Entry and Detainer in favor of Foxwell against the appellant when he found that “based on the requirements of the lease and the rights of the both the other tenants and the management, which are spelled out in the lease, I find by an abundance of evidence that the case has been adequately proven.” (District Court Trial Transcript, Vol. II, p. 393). The appellant filed an appeal for a jury trial de novo in accordance with M.R.Civ.P. 80D(f)(2). A two day jury trial was held in the York County Superior Court on November 23 and 24, 2009. The jury rendered a verdict in favor of Foxwell granting Foxwell a Judgment of Forcible Entry and Detainer for the premises located at 21 Manson Avenue, Apt. 28, Kittery, Maine. The appellant appeals the verdict of the jury and presents the instant appeal.

B. GENERAL STANDARD OF REVIEW

The appellant makes a number of arguments in support of her appeal regarding jury instructions, rulings on the evidence and the admission of testimony of a number of witnesses. As is well known by this Court, great deference is given to rulings of the trial court and verdicts of juries as the finder of fact. Before embarking on an analysis of each argument made by the appellant, an inquiry of the general standards of review applicable to an appeal of a verdict ***5** rendered in a jury trial is appropriate. When reviewing appeals based upon the sufficiency of evidence, whether certain given or denied jury instructions are appropriate, or rulings on evidence are **abuses** of discretion or clear error of law, this Court has held:

> We will not set aside a jury verdict unless no reasonable view of the evidence could sustain the verdict or it is prejudicially affected by error in instruction or rulings on evidence. We view the evidence and all justifiable inferences to be drawn from it in the light most favorable to the verdict *Hansen v. Sunday River Skiway Corp.*, 1999 ME 45, ¶ 5, 726 A. 2d 220, 222 (Me. 1999).

M.R.Civ.P. 61, entitled Harmless Error, sets forth the standard this Court should utilize in reviewing alleged errors claimed to have been made at trial below:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

In addition to the above standards, this Court has enunciated the harmless error standard:
Any alleged error of the trial court that does not affect the substantial rights of a party is harmless and therefore must be disregarded. *Shaw v. Packard*, 2005 ME 122, ¶ 13, 886 A. 2d 1287, 1290 (Me. 2005).

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An error is harmless if it is highly probable the error did not affect the factfinder's judgment. *In re Sarah C*, 2004 ME 152, ¶ 14, 864 A. 2d 162, 166 (Me. 2004).

It is the position of Foxwell that there is no error by the trial court below or in the jury's verdict. If the court finds that there is any error, Foxwell asserts that it is harmless consistent with the above standard. Foxwell will address each issue raised on appeal by appellant in turn.

*6 *C. STATEMENT OF LAW*

I. THE COURT DID NOT COMMIT ERROR IN INSTRUCTING THE JURY THAT THERE IS A COVENANT OF QUIET ENJOYMENT IMPLIED BY MAINE LAW IN RESIDENTIAL LEASEHOLDS & TENANCIES

It is well settled, Black Letter Law that, when a tenant rents a residential apartment, they are entitled to the covenant of peaceful and quiet enjoyment of the premises which means they are entitled to possession of the premises in peace and without disturbance or interference. Black's Law Dictionary, Fifth Edition, p. 1123. (Appendix, p. 88, Foxwell's Proposed Jury Instruction #5). Therefore, it is the duty of a landlord or property owner to allow the tenants to have the peaceful and quiet enjoyment of the premises. Foxwell requested the instruction on the covenant of peaceful and quiet enjoyment to be instructive to the jury to understand what rights that a tenant enjoys in a residential leasehold and tenancy and also because specific lease provisions that are central to this case mirror this very covenant. The jury instruction that the Court gave was based upon proposed jury instruction of Foxwell #5, but was in the Court's own words as is the favored practice. The instruction given by the Justice Brennan is as follows:

> Generally, let me advise you that, in all landlord/tenant relationships, they contain what we call a covenant, that is to say a provision for peaceful and quiet enjoyment. And what that means is that when a person rents or is a tenant in a residential apartment or a home, they are entitled to the peaceful and quiet enjoyment of the premises, meaning that they're entitled to possess, to live in the premises in peace and without unreasonable disturbance or interference. And that's a provision which is in all--that inures in all landlord/tenant relationship. (Tr., Vol. III, p.149)

The appellant asserts that “it was error for the Court to instruct the jury that a covenant of quiet enjoyment existed in this case to protect the landlord, as well as other tenants or other persons, from acts done by Hilbourne.” (Appellant's Brief, p. 5). The appellant confuses the issue and cites ***7** no standard of review to guide the Court in determining whether the trial judge

improperly instructed the jury. "The purpose of objections to instructions is to assist the trial court in developing the most accurate and concise statement of the law possible for instructing the jury, rather than to preserve points on appeal." *Clewley v. Whitney*, 2002 ME 61, ¶ 10, 794 A. 2d 87, 90 (Me. 2002).

The standard of review this Court uses to determine whether an instruction given to the jury is reversible is as follows: Error in jury instruction or in refusal to give a requested instruction is reversible error only if it results in prejudice. *State of Maine v. Warmke*, 2005 ME 99, ¶ 10, 879 A.2d 30, 33 (Me. 2005), *Clewley v. Whitney*, 2002 ME 61, ¶ 8, 794 A. 2d 87, 90 (Me. 2002), *Hansen v. Sunday River Skiway Corp.*, 1999 ME 45, ¶ 9, 726 A.2d 220, 223 (Me. 1999), *Niedojadlo v. Central Maine Moving & Storage*, 1998 ME 137, ¶ 6, 714 A. 2d 125, 127 (Me. 1998). This Court has stated:

> We will disturb a judgment only if the instructions failed sufficiently to inform the jury correctly and fairly in all necessary respects of governing law and the error is so exceptional that it seriously affected the fairness or integrity of the trial. *Michaud v. Wood*, 1998 ME 156, ¶ 4, 712 A. 2d 1068, 1069 (Me. 1998).

At page 4 and 5 of her brief, the appellant argues that it is only the landlord who can breach a tenant's covenant of quiet enjoyment to be free from interference or disturbance. Thus, she argues that she cannot be evicted from the premises because of her breaching the other tenants' covenant of peaceful and quiet enjoyment of the premises. However, her argument clearly misses the point. Justice Brennan's instruction to the jury regarding the covenant of peaceful and quiet enjoyment was given for the purpose of instructing the jury that all of the tenants that reside at Foxwell have the right to reside in their apartments, and in this apartment complex in peace and quiet and free from interference or disturbance. In a large housing complex filled with **elderly** and disabled tenants, the ***8** landlord has a duty to protect its residents from interference and disturbance from any source and of any kind or nature.

What the lease permits Foxwell to do is to evict tenants for "material noncompliance". Section 23 of the Lease, entitled *"TERMINATION OF TENANCY."* at subsection (b) states: "The Landlord may terminate this lease only for the Resident's material noncompliance with the terms of the Lease." In subsection C of Section 23, material noncompliance is defined as:

> .. ."Material noncompliance" includes, but is not limited to, .. .serious or repeated minor violations of the Lease which disrupt the livability of the building or project, adversely affect the health or safety of any person or the right of any Resident to the quiet enjoyment of the building or project facilities, interfere with the management of the building or project or have an adverse financial affect on the building or project. (Appendix, p. 19).

Therefore, if a resident is engaging in conduct which "adversely affects the health or safety of any person or the right of any resident to the quiet enjoyment of the building or project facilities or interferes with management," the landlord has the right to proceed with an eviction of that tenant. Not only is a covenant of peaceful and quiet enjoyment implied in all residential tenancies, it is contractually provided for by the above referenced language contained in Section 23 of the Lease. The lease agreement of the appellant and of all other residents of Foxwell states that no tenant has the right to engage in serious or repeated minor violations of the lease which adversely affects the health and safety of any person or ***"the right of any resident to the quiet enjoyment of the building or project facilities"*** Clearly, this provision covers individuals' rights to live in peace in their unit, the areas appurtenant to it, walkways and in all common areas, including community rooms and laundry facilities. Not only is the covenant of peaceful and quiet enjoyment implied in all leaseholds, it is contractually provided for in this section of the lease and other sections as well.

***9** The lease further provides for an affirmative contractual right to quiet and peaceful enjoyment of the premises, in other sections. Paragraph 31 of the Lease Agreement provides that there are certain attachments to the lease when it states "The resident certifies that he/she has received a copy of this lease and the following attachments to this lease and understands that these attachments are a part of the lease." (Appendix, p. 20) Subsection C of that section provides that attachment

number 3, the House Rules & Regulations, are part of the lease. (Appendix, p. 20). Paragraph 1 of the House Rules and Regulations provides that "violation of these Rules and Regulations is a violation of the Lease Agreement." (Appendix, p. 22). Paragraph 3 of the House Rules and Regulations provides, in a stand alone sentence, "other residents have the right to enjoy the premises." (Appendix, p. 22). Thus, the lease further contractually provides the right for other residents to enjoy the premises and further contractually incorporates the covenant of peaceful and quiet enjoyment into the House Rules & Regulations and thus, into the Lease Agreement.

The lease additionally provides that it is an affirmative obligation of a tenant not to interfere with other residents when it states, "the Resident agrees not to make or permit noises or acts that will disturb the rights and comforts of the neighbors." (Section 13(e) of Lease Agreement, Appendix, p. 15). Thus, Section 13(e) of the Lease further contractually obligates a tenant to not "disturb the rights and comforts of the neighbors."

Because under Maine Law tenants are provided with the implied covenant of peaceful and quiet enjoyment of the premises and because the Lease contractually provides each tenant with the right to enjoy the premises and the right to quiet enjoyment of the building or project facilities, it was not clear error of law for Justice Brennan to instruct the jury on the covenant of peaceful and quiet enjoyment. In fact, the lease itself contractually binds the landlord to provide the covenant of ***10** peaceful and quiet enjoyment to the tenants and prohibits other tenants from interfering with any and all tenants' right to the peaceful and quiet enjoyment of the premises. The lease contractually allows the landlord to seek to terminate any tenant's lease and tenancy when they engage in the afore described serious or minor repeated violations of the lease which adversely affects the livability of the premises or the right of any tenant to live in peace and quiet in the building or project.

Thus, the appellant is in complete error when she states that she cannot be evicted for breaching other tenants' peaceful and quiet enjoyment of the leased premises, the building and the project facilities because Foxwell is specifically allowed to terminate the lease of the appellant and evict her for violation of Section 13(e), House Rule and Regulation 1 & 3 and paragraph 23(c) by engaging in "acts that will disturb the rights or comforts of the neighbors". [Appendix p. 15, paragraph 13 (e)], conduct that interferes with "other residents having the right to enjoy the premises" (Appendix, p. 22, Paragraph 3) and for material noncompliance which means "serious or repeated minor violations of the lease which disrupt the livability of the building or project, adversely affect the health or safety of any person or the right of any Resident to the quiet enjoyment of the building or project facilities, interfere with the management of the building or project or have an adverse financial affect on the building or project". (Appendix, p. 19). The instruction created no prejudice to the appellant before the jury, but rather the instruction properly stated the law and did not confuse the jury.

II. THE COURT DID NOT COMMIT ERROR IN FAILING TO INSTRUCT THE JURY REGARDING THE INTERPRETATION OF SECTION 13(E) OF THE LEASE AND RULE NUMBER 3 IN HOUSE RULES & REGULATIONS

In order to vacate a judgment reached after a jury verdict based upon a denied jury instruction, the burden is on the appealing party. The standard is as follows:

***11** In order to vacate a judgment based on a denied jury instruction, the appealing party must demonstrate that the denied instruction: "(1) states the law correctly;(2) is generated by the evidence in the case; (3) is not misleading or confusing; and (4) is not otherwise sufficiently covered in the court's instructions." "In addition, the refusal to give the requested instruction must have been prejudicial to the requesting party." *State v. Warmke*, 2005 ME 99, ¶ 10, 879 A.2d 30, 33 (Me. 2005), *Clewley v. Whitney*, 2002 ME 61, ¶ 8, 794 A.2d 87, 90. (Me. 2002)

The Court properly instructed the jury relative to the various lease provisions for the jury to consider in determining whether the defendant engaged in lease violations sufficient to constitute material noncompliance with the terms and conditions of the lease. The appellant relies on two maxims and cites Corbin on Contracts to attempt to change the plain wording and meaning of two lease provisions. The appellant relies on the maxims noscitur a sociis which she states means that a contract term is known

by the company it keeps. She cites another maxim ejusdem generis. The appellant asserts that this maxim means a general term in a contract is interpreted by accompanying specific illustrations.

There is no need to inquire into the various maxims enunciated by the appellant from Corbin on Contracts as Maine law is absolutely clear on contract interpretation:

> A contract is to be interpreted to effect the parties intentions as reflected in the written instrument, construed with regard for the subject matter, motive, and purpose of the agreement, as well as the object to because accomplished. *Handy Boat v. Professional Services*, 1998 ME 134 ¶ 7, 711 A.2d 1306, 1308 (Me. 1998).

Additionally, "Language in a contract should be given its plain meaning," *Am. Pro. Ins. Co. v. Adacia Ins. Co.* 2003 ME 6, ¶¶ 12-13, 814 A.2d 989, 993-94 (Me. 2003). The entire agreement or contract is examined, and language is given its plain meaning. *State v. Murphy*, 2004 ME 118, ¶9, 861 A.2d 657, 661 (Me. 2004). The criterion is the intention of the parties to be derived from the whole instrument. ***12** *Bushell v. Wentworth*, 186 A. 803, 134 ME 383, 389 (Me. 1934).

However, where stand alone sentences have specific meanings, such interpretation is unnecessary. Section 13(e) entitled "*GENERAL RESTRICTIONS*," fully states "the Resident agrees: ...not to make or permit noises or acts that will disturb the rights or comforts of the neighbors." (Appendix, p. 15). The remainder of that paragraph states the "The resident agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors." The appellant then takes a leap of faith and argues that the only basis upon which Foxwell can evict the appellant is related to making loud noises from electronic type equipment, such as, a stereo, radio or television and submitted a jury instruction that attempted to limit Foxwells ability to evict her only for noises from electronic equipment. (See appellant's proposed jury instructions, Appendix, pp. 41-42).

The appellant has unsuccessfully made this argument at the District and Superior Court levels and now here. However, Foxwell has made it clear in the record and throughout this eviction process that it is not evicting the appellant for making loud noises with electronic equipment. In fact, the thirty (30) day notice of termination of lease and notice to vacate the premises is a ten page document which cites 73 different types of conduct that the appellant has engaged in over a significant period of time which amounts to harassment and **abuse** of other residents, management and other third parties. (Appendix, pp. 29-38). It establishes a systematic course of conduct and behavior that had the affect of disturbing and interfering with the rights and comforts of other residents and management in such a fashion that pitted tenant against tenant, tenant against management and the appellant against tenant and management. A few examples serve to illustrate the conduct that Ms. Hilbourne engaged in that deprived other tenants of their rights to enjoy their ***13** apartments and the complex.

On May 1, 2008 the appellant and a friend contacted the Kittery Police Department and falsely accused another resident, Bennett Sauer, of attempting to run the appellant and her friend over when, in fact, he was simply driving through the complex. (See Thirty (30) Day Notice of Termination at p. 29 of Appendix). In fact, the testimony of Bennett Sauer related to this false report by the appellant described how he was nearly arrested due to these false allegations. He was questioned at length at the police station and had to provide the police with a witness to prove his innocence. (Tr., Vol. II, pp. 51-55) What greater deprivation of the right to enjoy the premises is there than to be almost arrested based on false allegations from another resident?

Another example of the type of behavior that the appellant engaged in involved a healthcare worker from Arcadia Health Services, Christiane Higgins. During the winter and spring of 2008, the appellant systematically harassed Ms. Higgins to the point where Arcadia Health Services removed Ms. Higgins from providing services to two residents at Foxwell. Ms. Higgins provided services to two residents wherein she did light housekeeping, cook meals, assisted with bathing, picking up the mail and provided other household duties that allowed those two residents to enjoy independent living within the Foxwell community. The appellant harassed Ms. Higgins by following her around the premises and further by spreading rumors saying that Ms. Higgins was trying to steal people's identities, that she was dealing illegal drugs and that she was staying in various apartments throughout Foxwell. Ms. Hilbourne called the administrative offices of Arcadia Health Services and lodged a number

of complaints against Ms. Higgins to the point where the supervisor became afraid for the safety of Ms. Higgins. Accordingly, Arcadia Health Services removed any and all workers from the Foxwell complex. (See testimony of Christiane Higgins, Tr., Vol. I, pp. 57-76 and Dawn ***14** Worster, Tr., Vol. I, pp. 22-49)

There are numerous other examples of similar type harassing behavior wherein the appellant harassed numerous other residents. As such, to assert that Foxwell can only terminate the lease due to loud noise from electronic devices and not from behavior that interferes with the other residents rights to enjoy the apartment complex is confusing, misleading and is not an accurate statement of what the lease states.

To suggest that the two stand alone sentences in section 13(e) must be read together is also confusing and misleading. It is clear that the first sentence is a broad prohibition which makes it a lease violation for any tenant "to make or permit noises or ***acts*** that will disturb the rights or comfort of neighbors." It is clear from that sentence that a tenant may not make noises or engage in acts which will disturb the rights or comforts of the neighbors. There are two separate distinctions set forth by that first sentence. There is no question that to the extent to which the first sentence references that the tenant agrees not to make or permit ***noises***...that will disturb the rights or comforts of the neighbors, the second sentence of that paragraph does provide illustration for the types of "*noises*" that can be included within that prohibition. The second sentence states the "Resident agrees to keep the volume of any radio, phonograph, television or musical instrument at a level which will not disturb the neighbors." The second sentence sets up affirmative obligation or a covenant that each resident agrees not to engage in that type of behavior, related to some type of noises. It provides examples of certain types of noises, i.e. from electronic musical or television equipment, but is not inclusive and does not limit other types of noises. However, if the residents were creating such other disturbances such as continuously moving furniture, banging the walls or other systematic noises, the appellant's argument would provide that a tenant cannot be evicted for ***15** those types of noises and that those noises are not prohibited. Taking the appellant's arguments on face value, the landlord would not be able to evict the tenant for any noises other than the ones specifically stated in that Section 13(e) of the lease. Obviously, the argument is flawed, not commonsensical and does not give the language its "plain meaning".

However, the first sentence of section 13(e) clearly provides that the tenant agrees not to make or permit ... ***acts*** that will disturb the rights or comforts of neighbors. Obviously, every landlord, property management company, housing authority or provider of residential tenancies cannot think of every eventuality of conduct that a tenant could engage in that would warrant grounds for eviction. While a lease must provide notice to a tenant as to what conduct they can and cannot engage in, it is further illogical to require a lease to have every specific ground upon which a lease can be terminated specifically enumerated. A provision that generally prevents a tenant from engaging in acts that disturb other tenants' rights to enjoy the premises is clear and specific enough to cover the pervasive course of conduct engaged in by the tenant in this case. To suggest that the appellant can only be evicted for generating loud noise from electronic devices, when interpreting Section 13(e) of the Lease and paragraph 3 of the House Rules and Regulations and not for nearly causing another resident to be arrested due to a false police report or another resident losing healthcare services, is illogical and construes those provisions without regard to the subject matter, motive and purpose of the Lease and disregards the object to be accomplished as suggested by the above case law.

Furthermore, paragraph 23.b. (9) states that "the landlord may terminate this lease only for the Resident's material noncompliance with the terms of the lease." In subsection (c) of section 23 it states "in connection with Paragraph 23.b. (9), "material noncompliance includes, but is not limited ***16** to", and then goes on to define certain types of behavior which constitutes material noncompliance in conjunction with this HUD developed lease. That provision continues along and provides approximately 12 different types of lease violations which constitute material noncompliance. The most compelling language in that paragraph is that, while they provide a number of types of conduct that constitute "material noncompliance", the lease does not limit itself to those definitions because it states the definition of material noncompliance ***"includes, but is not limited to...."*** As stated earlier, a lease cannot articulate every specific ground upon which it could be terminated. Obviously, the lease allows for other types of conduct to be included within the definition of material noncompliance.

However, the final portion of Paragraph c of section 23 specifically defines "material noncompliance" as:

> ...serious or repeated minor violations of the Lease which disrupt the livability of the building or project, adversely affect the health or safety of any person or the right of any Resident to the quiet enjoyment of the building or project facilities, interfere with the management of the building or project or have an adverse financial affect on the building or project. [Appendix, p. 19, section 23(c)]

Therefore, when read together, those provisions from section 13(e), section 23(c) from the lease and paragraph 3 of the House Rules and Regulations are very consistent and applicable to the type of conduct the appellant engaged in which constitutes "material noncompliance".

Therefore, the jury instruction of the appellant limiting the definition of material noncompliance to only allow the appellant to be evicted for noise from music and television equipment is misleading and confusing, prejudicial to Foxwell, incorrectly stated the law, not generated by the evidence and did not give the lease its plain meaning.

***17 III. THE COURT DID NOT COMMIT ABUSE OF DISCRETION IN ALLOWING TESTIMONY BY THOSE PERSONS WHO WERE NOT TENANTS AT FOXWELL**

Foxwell introduced testimony from non residents which included a U.S. Postal mail carrier, the daughter of a resident visiting the premises, a Kittery Police Dispatcher, representatives from Arcadia Health Services and a maintenance person from Foxwell. The appellant essentially suggests that because the above referenced individuals were not residents of Foxwell, their testimony was irrelevant and should be excluded because the Court **abused** its discretion in allowing their testimony due to it being prejudicial in nature. Nothing could be further from the truth. The testimony of the U.S. Postal mail carrier, Michael Nelson, and the daughter of one of the residents, Helen Poisson, served to provide corroborating testimony of many of the residents that did in fact testify. Certainly, one line of defense or theory that the appellant could have pursued in this matter was that tenants that testified against the appellant could have been members of an informal clique that did not like the appellant and thus make complaints to management so as to have her evicted from the premises. It could have been a theory that they collectively got together, decided upon a story regarding the appellant's behavior and made complaints to management to get her evicted. The postal carrier confirmed many things that the appellant said about Christianne Higgins and the harassment of the Hentzels. (See testimony of Michael Nelson at Tr., Vol. I, 8-22). The testimony of Michael Nelson and Helen Poisson corroborated the testimony of other witnesses.

The testimony of Helen Poisson, a daughter of a resident residing at Foxwell mirrors the testimony of Karen Welch, a resident of Foxwell. Karen Welch testified that when she moved into Foxwell and was a new resident, she was approached by the appellant at the community room where she was doing her laundry. The conversation started out cordially and then the appellant began ***18** discussing activities that occurred at Foxwell regularly. She told Ms. Welch to keep her door locked because there were numerous break ins, that there were illegal drug activities occurring there, that the police did not take corrective actions relative to this type of behavior and that Foxwell was being investigated by the Attorney Generals Office. She went on to discuss other types of behavior that was engaged in by other residents. (Tr., Vol. II, pp. 12-16). The testimony of Helen Poisson specifically mirrors the testimony of Karen Welch as the appellant stated the same things and acted the same way when she went to the community room to pick up her mother's mail. Therefore, her testimony corroborated the testimony of Karen Welch. (Tr., Vol. II, pp. 4-16). Clearly, the Court, by allowing the testimony of these two witnesses, did not fall within the category of **abuse** of discretion. Without giving example after example, the testimony of Mr. Nelson and Ms. Poisson corroborated and was germane to the credibility of a number of the witnesses who were residents of the premises, and that testified at trial.

The testimony of a dispatcher from the Kittery Police Department, Julie McGregor, also was very relevant to Ms. Hilbourne's conduct that affected delivery of police services to the Foxwell complex. Ms. McGregor testified that she was instructed by her supervisor to contact Avesta and advise them to warn the appellant to stop making harassing calls to the police department.

(See discussion of Ms. McGregor's testimony and Cynde Spaulding's testimony on the relevancy of her testimony in Section V, pp. 28-29 of this Brief).

The testimony of Dawn Worcester and Christiane Higgins of Arcadia Health Services elicited direct testimony on the issue of how Arcadia removed Christiane Higgins and any and all other workers from the Foxwell complex due to harassment by the Defendant of Ms. Higgins. As previously mentioned Arcadia provided workers that would assist certain residents with light ***19** housekeeping, bathing, cooking of meals, picking up the mail, running errands and other such daily activities for residents who could not perform these tasks. Two (2) residents directly relied upon the services of Christiane Higgins to allow them to continue to enjoy independent living at the Foxwell complex and in their apartment units. To have those services taken away due to harassment by Karen Hilbourne is overwhelmingly relevant. (See testimony of Christiane Higgins, Tr., Vol. I, pp. 57-76 and Arcadia Supervisor Dawn Worster, Tr.,Vol. I, pp. 22-49).

The testimony of Ed Beeton from Avesta Housing clearly established that Karen Hilbourne would talk to him at length about people dealing drugs at the complex, stealing her identity, breaking into her mail box and into her unit. He indicated that this would take a significant amount of time and interfere with his duties. Mr. Beaton works for the management company and comes within the definition of management was in the meaning of section 23(c) as it relates to material noncompliance. Additionally, the defendant eventually accused Ed Beeton of stalking her, looking in her windows, breaking into her unit and essentially sexually harassing her. Because of these false allegations, Cynde Spaulding, the property manager for Avesta Housing was required to go with Ed Beeton anytime he had to perform a repair or inspect Ms. Hilbourne's unit. Therefore, the appellant's conduct interfered with management within the meaning of material noncompliance and also consumed a significant amount of time related to management's delivery of services to other tenants. (See testimony of Edward Beeton at Tr., Vol. III, pp. 44-51)

Additionally, the appellant also accused other male residents of peeking into her windows, stalking her, sexually harassing her and having a sexual interest in her. Thus, his testimony corroborated other tenants testimony. (See Section V, p. 27 -28 of this Brief for further discussions of the relevancy of Mr. Beeton's testimony). As such, it is not an **abuse** of discretion for the Court ***20** to allow the testimony of the above referenced witnesses as they either testified about conduct of the appellant directly affecting other residents or corroborating and lending credibility to other residents' testimony.

IV. THE COURT DID NOT COMMIT ABUSE OF DISCRETION IN ALLOWING TESTIMONY BY PHIL ELMO OF AN INCIDENT WHICH TOOK PLACE WITHIN FEET OF FOXWELL ON AN APPURTENANT ROADWAY.

Foxwell presented the testimony of Phillip Elmo, a resident of Foxwell, concerning several points. One of the major lease violations that Ms. Hilbourne engaged in on a continuing basis would be to target certain tenants and harass them to the point where they would not want to live in the premises anymore. She would accuse people of breaking into her apartment, using her health insurance plan, trying to steal her benefits and otherwise stealing her identity. There was one specific family, the Hentzels, that Ms. Hilbourne continuously made comments to other residents about in this regard. Mr. Elmo testified Karen Hilbourne “was accusing Brad Hentzel of breaking into her apartment, and using the health insurance scheme,” and was saying that it works, “cause they ended up moving.” (Tr., Vol II, p. 73). Mr. Elmo testified to an incident where he was at the common area community room in April or May of 2006 in which he was watching television while doing his laundry. (Tr., Vol. II, pp. 75-77). Essentially, Mr. Elmo testified that while he was at the community room, Karen Hilbourne came into the community room and started shooting pool with David Tibbetts, a friend of Ms. Hilbourne. She essentially was bragging about how all of her harassment of the Hentzels worked and that it caused them to move. Mr. Elmo described her behavior when she admitted to him that all of her harassment forced the Hentzels to move: “She was gloating, laughing at times.” (Tr., Vol. II p. 77, 1.3). He testified that the Hentzels were good friends ***21** of his. When questioned about how the behavior *of* Ms. Hilbourne made him feel, he stated “It's disturbing. I mean, I don't like it.” He also testified that Ms. Hilbourne essentially was laughing at him and accusing him of being gay. (Tr., Vol. II pp. 75-77). He testified that the allegation by the defendant had bothered him quite a bit and that he didn't like it at all. (Tr., Vol. II, p. 76 ls, 5-6).

Mr. Elmo then testified about an incident where he walked from his apartment on Manson Avenue, down the hill to the main road which is Shapleigh Road. He was going to pick up his prescription at Rite-Aid. Mr. Elmo testified that as he was leaving Manson Avenue which is the road that is appurtenant to and part of the complex. He left Manson Avenue, entered the crosswalk and began traversing it. As he was about in the middle of the road and he observed the appellant coming toward him in her truck. Regarding this incident, he testified as follows:

> Instead of where she normally turns to pull in to go to her apartment, she kept on coming, stopped. (Tr., Vol. I, p. 79, ls 17-19). *** I was getting ready to--I was going to cross. (Tr. Vol. II, p.79, l. 25). *** I observed her truck coming at me *** It was moving master. Yes. She whipped that car--She whipped that vehicle. She gunned it. *** I was crossing to go across the street, over to the Rite-Aid side. (Tr., Vol. II, p.80, ls 15-25).

Mr. Elmo testified that she stopped her vehicle three to four feet away from him and he testified that he was scared as a result of this incident. (Tr., Vol. II, p. 81, ls 8-13).

The appellant argues that it was clear error of law and an **abuse** of discretion for the Court to allow testimony regarding this incident because it occurred off of the lease premises. However, when viewing the evidence presented in a jury trial, the law Court has stated:

> We will not set aside a jury verdict unless no reasonable view of the evidence could sustain the verdict or it is prejudicially affected by error in instruction or rulings on evidence. We view the evidence and all justifiable inferences to be drawn from it in the light most favorable to the verdict *Hansen v. Sunday River Skiway Corp.*, 1999 ME 45, ¶ 5, 726 A.2d 220, 222 (Me. 1999).

***22** To argue that this incident caused prejudice to the jury, was clear error of law and an **abuse** of discretion by the trial Court clearly confuses the issue. First, Phil Elmo had pertinent and germane testimony regarding the appellant's behavior in the community room wherein she bragged that she harassed the Hentzels to the point where they vacated the apartment complex and moved. She derogatorily called Phil Elmo gay. All of this occurred on the premises and is consistent with the other types of behavior that the jury heard testimony about from numerous witnesses. Secondly, the incident where he was almost run down by the appellant took place only a few feet off the apartment complex's land. The appellant was on her way back into the complex on Shapleigh Road and is an area that is appurtenant to and part of the premises to the extent to which it was a crosswalk leading from the premises. They both were within a matter of feet of the complex. The behavior of the appellant in trying to scare Mr. Elmo by pretending to run him over is consistent with numerous other incidents testified about by other residents at the premises. The appellant argues that even though this conduct took place only a few feet off the premises in a sidewalk, it should not be considered. He argues that “such an interpretation would then lead to strange results, such as, for example, an interaction between two tenants in Boston, Massachusetts that could then be a cause for an eviction action in the State of Maine.” (Brief of appellant, p. 18).

However, this incident did not occur in Boston. It occurred within a few feet of the premises in a crosswalk leading to and from the premises. In no way did the testimony about this incident mislead or confuse the jury. The evidence is consistent with other testimony of other witnesses. In fact, it is behavior prohibited by the lease and it forms the basis of yet another example of the appellant harassing another tenant and disrupting his ability to enjoy the premises. ***23** Even if this Court was to determine that, because this incident occurred a few feet off of the premises and should not be considered by the jury, the Court's decision to allow the testimony is absolutely harmless error because the behavior is so consistent with Ms. Hilbourne's other behavior and because it is overwhelmingly “probable the error did not affect the fact finder's judgment.” In re Sarah C., 2004 ME 152, ¶ 14, 864 A.2d 162, 166 (Me. 2004).

V. THE COURT DID NOT COMMIT ABUSE OF DISCRETION BY ALLOWING CYNTHIA SPAULDING, MANAGER OF FOXWELL, TO TESTIFY ABOUT COMPLAINTS KAREN HILBOURNE MADE TO HER ABOUT OTHER TENANTS AND CONTACT WITH MAINTENANCE

Foxwell presented the directed testimony of Cynde Spaulding the property manager for the Foxwell apartment complex in Kittery, Maine. She also testified that she was responsible for a total of one hundred and forty-three (143) units in Southern Maine. She further testified that as property manager she was responsible for the physical condition of the units, the buildings and the project facilities. She testified that Foxwell is an apartment complex that is for low income, **elderly** and disabled residents. (Tr., Vol. II, p. 118). She also testified that, as property manager, she was responsible for all tenant related issues. She testified that she was on site at Foxwell approximately 2 days a week. (Tr., Vol. II, p. 117). As property manager, Cynde Spaulding provided testimony regarding the larger picture of the appellant's behavior. Foxwell presented the testimony of a number of residents and other parties that provided incidents related to the appellant's conduct. Ms. Spaulding was able to testify with regard to the larger picture and how many of these incidents were related. She was able to provide background information. Clearly, all of her testimony was pertinent and germane to issues concerning the appellant's lease and tenancy.

***24** The appellant argues that "All the complaints made by Hilbourne to Avesta were not relevant to the issue of 'material noncompliance' with the terms of the lease and was **abuse** of discretion for the Court to admit this testimony into evidence." (Appellant's Brief, p.21). Specifically, the appellant argues that testimony from Cynde Spaulding about complaints made by Karen Hilbourne about other tenants was not relevant to the issue of whether she was in material noncompliance with the terms and conditions of her lease. The appellant further argues that it was **abuse** of discretion for Ms. Spaulding to testify about complaints made by other tenants concerning the appellant. To a lesser degree the appellant also challenges testimony by Cynde Spaulding about complaints by appellant to the police which were relayed to Ms. Spaulding and how all of these complaints by the appellant affected her job. The appellant also objects to testimony by Ms. Spaulding complaints by the appellant about the condition of her apartment. Each of these areas of testimony by Ms. Spaulding will be addressed in turn.

a.) Testimony of property manager as to complaints by appellant to management about other tenants clearly relevant and germane to issue of material noncompliance.

Cynde Spaulding testified that when a resident complains about an incident involving another tenant she would ask the complaining tenant to put the complaint in writing. Whether the complaint turned out being in writing or just verbal, Ms. Spaulding followed a certain protocol.

> What I do is I go to the person that they're complaining about, or the supposed perpetrator, and I investigate. I verbally talk with that person. I do not tell them who complained. I try to leave it confidential to try to de-escalate the whole situation and get, you know, true facts. But, if it's brought to me verbally, I address it verbally. And, then, what I try to do is I try to do a memo to file, and try to follow up, just put a memo in the file as to what has taken place, who said what, what happened, who called who,.... (Tr., Vol. III, p. 125, ls 5-16).

***25** Clearly, Ms. Spaulding's testimony about the appellant's complaints about other residents clearly affects their right to enjoy the premises. In concluding her testimony, Cynde Spaulding stated that of the numerous complaints lodged by the appellant against numerous other residents over a period of approximately five years, no complaints even resulted in any of those other residents ever being cited for lease violations or disciplined in any way. (Tr., Vol. III, p. 24). Additionally, Ms. Spaulding testified that Ms. Hilbourne's file was inordinately large and should have only contained several new pieces of paper annually. (Tr., Vol. III, pp 22-23).

Accordingly, Ms. Spaulding's testimony concerning complaints by the appellant regarding other residents is completely relevant to the issue of whether she is in material noncompliance of the terms and conditions of her lease on two levels. In reference to

each and every complaint lodged by the appellant against other tenants, Ms. Spaulding would have to go out and investigate the incident by interviewing the tenant complained about. Obviously, being interviewed by the property manager wherein you are accused of unwanted complaints about your conduct clearly affects the rights of the residents to enjoy the premises and the Iivability of the premises and their right to be free from interference.

Secondly, Cynde Spaulding's testimony about having to deal with the numerous complaints filed by Ms. Hilbourne interfered with the management of the building or project as specifically defined in the lease at section 23(c) and constitutes "material noncompliance". (Appendix, p. 19) Thus, Ms. Spaulding's testimony about the numerous complaints filed by the appellant against other residents is clearly relevant and not prejudicial.

26** ***b.) Appellant's argument that testimony about complaints by other tenants regarding appellant is frivolous and specious.

For the appellant to argue that the property manager for an apartment complex is unable to testify about complaints received about a tenant engaged in lease violations from other tenants is absurd, frivolous, and preposterous. The fact that a property manager receives numerous complaints about a tenant that is interfering with the rights and comforts of other residents is absolutely relevant to a behavioral eviction for material noncompliance with the terms and conditions of the lease. The fact that numerous tenants from a large apartment complex complained about one specific tenant being involved in a wide variety of incidents, clearly forms the basis for a property manager to assess as to whether or not to evict a tenant for these violations. As stated throughout this brief, the Foxwell complex contains disabled individuals and **elderly**. For these individuals to be constantly harassed by the Ms. Hilbourne is clearly relevant to the eviction. In accordance of section 13(e) of the lease, it is management's job to ensure that residents do not "make or permit noises or acts that will disturb the rights or comforts of neighbors." (Appendix, p. 15). In addition, it is management's job to ensure that "other residents have the right to enjoy the premises in accordance with House Rule and Regulation 3." (Appendix, p. 22). The testimony by Ms. Spaulding regarding complaints by other tenants about Ms. Hilbourne discusses lease violations by Ms. Hilbourne "which disrupt the livability of the building or project, adversely affect the health or safety of any person or the right of any Resident to the quiet enjoyment of the building or project facilities." (Section 23(c), Appendix, p. 19). Additionally, as previously stated and cited in this brief, Karen Hilbourne was an administrative burden to Cynde Spaulding who only spent two days a week at the premises and had to ***27** continually document incidents complained to management by appellant or about appellant. This clearly interfered with management within the context of the definition of the material noncompliance as set forth in the lease. Therefore, the complaints about Ms. Hilbourne not only are relevant but formed the very basis of the eviction action.

c.) ***Testimony of property manager about repairs and inspections to appellant's apartment are corroborative of other residents testimony and interfere with management.***

Section 23(c) provides as part of the definition of "material noncompliance" that a tenant shall not engage in serious or repeated minor violations of the lease which "interfere with the management or project of the building or have an adverse financial affect on the building or project." (Appendix, p. 19). The appellant argues that Ms. Spaulding should have been prevented from testifying about complaints by Ms. Hilbourne about the condition of her apartment. Again, the appellant's argument misses the point and tries to confuse the issue. The purpose of the testimony of Cynde Spaulding regarding her interaction with Ms. Hilbourne and the maintenance main, Ed Beeton, is testimony that corroborates other tenants' testimony and provides credibility to other tenants' testimony concerning allegations that Ms. Hilbourne made regarding a number of men at the complex. She accused a number of male residents of peeking in her windows, breaking into her unit and being after her sexually. Ms. Spaulding testified that Ms. Hilbourne would call her and complain about Ed Beeton:

> Well, at that point, Karen felt that Ed was, you know, sexually after her, that he--that when he was in her apartment, that he was going through her personal belongings, going through her medical paperwork that was on her table or something like that. She called me very, very irate, just beside herself that he shouldn't

> be there and these were the things that he was doing to her. She also felt that was purposely leaving his tools there so he could come and access her apartment. (Tr., Vol. III, p. 15).

***28** Thus, Ms. Spaulding's testimony about the complaints by the appellant corroborate and lend credibility to the complaints made by other residents about the appellant wherein she accused them of the same thing. Therefore, the Court committed no **abuse** of discretion by allowing her to testify in this manner.

She also testified that, because of these allegations regarding Ed Beeton, she and the regional property manager made a decision that anytime Ms. Hilbourne required repairs to her unit, Cynde Spaulding would be present with maintenance. Therefore, the testimony about how the appellant interfered with management and maintenance.

d) Cynde Spaulding's testimony regarding communications with the police department about appellant is relevant.

Appellant argues that Ms. Spaulding should not have been allowed to testify about complaints by the appellant to the police at page 19 of her Brief. The testimony provided by Cynde Spaulding regarding her interactions with the police department was presented in conjunction with the testimony of Julie McGregor, a dispatcher from the Kittery Police Department. Essentially, Julie McGregor was advised by her supervisor to contact Cynde Spaulding to advise them of the fact that the appellant was make numerous complaints and requests for officers to come to the premises on a number of occasions. (Tr., Vol. II, pp. 122-123). She testified that, after Ms. Hilbourne would place an initial call and make a complaint, she would continuously call on a number of occasions until an officer showed up. (Tr., Vol. II, p. 122).

Cynde Spaulding testified about her communications with Julie McGregor when she indicated:

> The Kittery Police actually called me and notified me of some of the calls that they had to ***29** go on to the property. And it was at that point when Miss McGregor introduced herself to me, and explained to me that this was starting to interfere with her job as a dispatcher, and the safety of the people within the Town of Kittery, because they were receiving, you know, phone call after phone call after phone call. Even if it was one incident, she would just keep calling, you know, escalating it. (Tr., Vol. II, p. 149).

Obviously to the extent to which Ms. Hilbourne's conduct affected the delivery of police services to the premises and to other residents, Cynde Spaulding's testimony was clearly relevant.

Ms. Spaulding's testimony was also relevant when she expressed her opinion about how the police being on the premises frequently affected the **elderly** and disabled residents. Ms. Spaulding testified:

> I always try to refer to these complexes and this form of living is at this point, their lives are becoming so small because they're not able to easily, you know, freely move about the community and go do things. Their lives become smaller. And, so, they're more focused on what's going on outdoors, out of their front window or what the next person next door is doing. And I think it magnifies-- any negative thing magnifies their senses, and it--they get very anxious, they get very worrisome when they see the police show up, and the fire department show up. And it's--you know, it's a really big to-do. (Tr., Vol. II, p. 150).

Clearly, by having Ms. Hilbourne call the police to be on the premises frequently, it affected the livability of the premises by the other tenants. According to Ms. Spaulding, it put them on edge and made them worrisome. It was not **abuse** of discretion by the Court to allow testimony by Cynde Spaulding to discuss how the appellant's calls to the police department affected other residents.

VI. THE LEASE WAS IN CONTINUOUS EFFECT

The initial one year term of the lease of the appellant ran from March 1, 2005 to February 28, 2006. In Section 2, page 1, of the Lease, it states "After the initial term ends, the Lease will continue for successive terms of one month each. The Lease may be terminated as permitted by ***30** paragraph 23 of the Lease." (Appendix, p. 11).

The appellant has argued at all levels and here as follows:
The Defendant argued before and during trial that Hilbourne was a month to month tenant in August, 2008, the date the Notice of Eviction dated August 28, 2008 was served on her, so that only acts she took during her month long tenancy in August, 2008 could be considered. Because there were no actions taken by Hilbourne in August, 2008 which were described in the Notice of Eviction, nor any testified about at trial, she should be entitled to judgment as a matter of law.

****

The term of the lease in this case was one month, the month of August, 2008. This is because the lease provides that "after the initial term ends, the Lease will continue for successive terms of one month each." Thus, when the landlord provided its 30 day termination notice on August 28, 2008 the term of the lease was for the month of August, 2008. A landlord must seek to evict a tenant for actions taken during the term of a lease, and not outside of that term. (Appellant's Brief, pp. 21, 22)

Such an argument is contrary to the clear language of the Lease which should be construed to effect to its plain meaning.

After the initial term ends the lease, the language of the Lease does not state that it will be "renewed" for successive terms. It specifically states that the Lease will *"continue"* for successive terms of one month each. Justice Fritzsche agreed with Foxwell's analysis when he considered this very same legal argument from the appellant at the District Court Level:
The first one is Paragraph 2, which is length of time of term. It does state that the initial term of the lease shall be one year beginning on March 1st, 2005 and ending on February 28, 2006. After the initial term ends the lease will continue for successive terms of one month each. The lease may be terminated as permitted by Paragraph 23 of the [re]lease. So, the initial question is: After February 28th, 2006 is the plaintiff limited to the one month before the notice of eviction was given or is the property owner entitled to refer to anything that's started on or after February -- on or after March 1st, 2005? I believe that the proper reading is that the property owner may go back. (Superior Court Tr., Vol. II, p. 378, 1. 23--p. 379, 1.11)

***31 * * ***

So I think that the proper analysis is that the lease continues a month at that time and that either side can terminate it. The tenant would terminate by giving a 30-day notice to leave; the landlord could give it by giving a 30 or more day notice specifying specific grounds for the claimed lease violation. If you did that otherwise, I think what would then happen is the landlord would be required to act immediately. If the notion was you have got 30 days to act on something or all is forgiven then I think that the landlord would be forced to proceed very quickly, not give people second chances, not give people opportunity and say, if we don't move on this after 30 days our opportunity to utilize that is gone. I think that that would be a bad policy for tenants, I don't think it is required under the lease and that the lease just continues as really the same lease. (Superior Court Tr., Vol. II, p. 37, 1.21--p. 380, 1.11).

For those reasons, the trial judge properly permitted the jury to hear evidence of lease violations from March 1, 2005 through August 27, 2008, the date of the Notice of Termination and Notice to Quit. (Appendix, p. 29).

A basic examination of the concept and definitions of tenancies-at-will and leaseholds will serve to buttress Justice Fritzsche legal reasoning. Black's Law Dictionary defines a tenancy at will as follows:

> One who holds possession of premises by permission of owner or landlord, but without fixed term. Where lands or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called "tenant at will," because he has no certain nor sure estate, for the lessor may put him out at what time it pleases him. (Black's Law Dictionary, Fifth Edition, p. 1314).

Obviously, the above definition is taken from the common law. "The common law governs relations between a landlord and tenant unless there is an agreement to the contrary." *Small v. Durango Partners, LLC*, 2007 ME 99, ¶ 10, 930 A.2d 297, 301 (Me. 2007). The Entry and Detainer Statute contained at Title 14 M.R.S.A. §6001, et seq., provides no legal definition of what a tenancy-at-will ***32** is.

Thus, pursuant to the legal reasoning in the *Small* case, the common law definition of a tenancy-at-will carries the day. Thus, a tenant-at-will is "one who holds possession of premises by permission of owner or landlord, but without fixed term." Title 14 M.R.S.A. §6002 governs how tenancies-at-will can be terminated.

Under Section 6002 a tenancy-at-will may be, terminated by:

> A minimum of 30 days' notice ... in writing for that purpose given to the other party .... In cases when the tenant has paid rent through the date when a 30-day notice would expire, the notice must on or after the date through which the rent has been paid.

Additionally, Section 6002 (1) also allows the landlord to terminate the tenancy-at-will with seven (7) days notice for cause, such as, nonpayment of rent, substantial damage to the premises or causing a nuisance. The statute does not state that any such violation of the statute must be limited to the last thirty (30) days or that a tenancy-at-will automatically renews itself monthly.

A tenancy-at-will in Maine is when a tenant takes possession of the premises with the permission of the landowner for a undefined and unfixed term subject to the landlord's right to terminate that tenancy-at-will with thirty (30) days notice without cause and seven (7) days notice with cause. The significance of the thirty (30) day notice of termination provision Title 14 M.R.S.A. § 6002 is that it simply provides a mechanism by which a landlord can terminate this tenancy-at-will which contains an undefined and unfixed term. It clearly does not create self-renewing monthly terms.

Accordingly, the tenancy-at-will landlord will be able to look back at violations of the tenancy by the tenant from the inception of the tenancy (the date the tenant took possession) through ***33** the date the landlord seeks to terminate the tenancy at will. Thus, if a tenant engaged in loud parties throughout the tenancy that may not have been ground for immediate termination, but that the noise and parties became more frequent and disturbing, the landlord would be able to use all such incidents as grounds to terminate the tenancy over the course of the entire tenancy and not just the last month as the appellant would argue.

The same principles apply to a leasehold. A leasehold is "an estate in realty held under a lease." Black's Law Dictionary, Fifth Edition, p. 801. The common does not apply as there is an agreement in writing to the contrary. In examining a holdover clause at the expiration of a specified lease term, this Court has provided guidance for the case at bar. In *Small v. Durango Partners, LLC*, 2007 ME 99, 930 A.2d 297 (Me 2007), the lease provided that if the tenants held over after the expiration of the lease, then they would be tenants at will, subject to all of the terms and conditions of the lease, including the payment of rent." Id. @ ¶ 11, p. 301. While there was dispute in that case as to whether the tenants were holding over with the permission of the landlord, this Court ruled that there was "no error in the Superior Court's conclusion that all of the terms of the lease, except notice to vacate, remain applicable during Small and Cunningham's holdover...." Id. @ ¶ 13, p. 302. Such a result is anticipated by the lease agreement...." Id. @ ¶ 13, p. 302.

What is crucial to the case at bar from the legal reasoning in *Small* is that all of the terms and conditions of the lease are in full force and effect for the entire holdover period of the tenants except for the ability of either party to terminate the lease at the expiration of any monthly term with thirty (30) days notice. Thus, the landlord would be able to terminate the lease for cause for any violation of the lease during the entire holdover and not just for violations which occur in one month because the lease remains in continuous effect.

***34** In order to determine whether the lease between remains in continuous effect after the initial term like the tenants' holdover term in Small, an examination of the express language of the Lease on that point must take place. In Section 2, page 1, of the Lease, it states "After the initial term ends, the Lease will continue for successive terms of one month each. The Lease may be terminated as permitted by paragraph 23 of the Lease." (Appendix, p. 11). After the initial term ends the lease, the language of the Lease does not state that it will be **"renewed"** for successive terms. It specifically states that the Lease will "*continue*" for successive terms of one month each after the initial term. In regard to interpretation of the term that the lease will continue for successive terms, and examination of its plain meaning is appropriate.

> A contract is to be interpreted to effect the parties intentions as reflected in the written instrument, construed with regard for the subject matter, motive, and purpose of the agreement, as well as the object to because accomplished. *Handy Boat v. Professional Services*, 1998 ME 134 ¶7, 711 A.2d, 1306, 1308 (Me. 1998).

Additionally, "Language in a contract should be given its plain meaning." *Am. Pro, Ins. Co. v. Adacia Ins. Co*. 2003 ME 6, ¶¶ 12-13, 814 A.2d 989, 993-94 (Me. 2003). The entire agreement or contract is examined, and language is given its plain meaning. *State v. Murphy*, 2004 ME 118, ¶9, 861 A.2d, 657, 661 (Me. 2004). The criterion is the intention of the parties to be derived from the whole instrument. *Bushell v. Wentworth*, 186 A. 803, 134 ME 383, 389 (Me. 1934).

The leasehold is the leasehold, and the lease governs it on a continuous basis. However, while the lease and tenancy may be terminated at any time with 30 days notice by the tenant for no reason, management can only terminate it for cause. The landlord must terminate for cause in Sections 23(b), (c), (e), (f) and (g) or for violations of the House Rules. The federal regulations ***35** which govern these leases and tenancies are contained at Title 24 CFR, § 247 and provide that the "landlord *may not terminate any tenancy in a subsidized project except upon the following grounds:* (1.) Material noncompliance with the rental agreement, (2.) Material failure to carry out obligations under any state landlord and tenant act, (3.) criminal activity .... (4) Other good cause." Title 24 CFR § 247(2)(a) (Emphasis added). So the lease continues ad infinitum for the benefit of the tenant provided the tenant remains income eligible, wants to remain in the premises and otherwise complies with the lease and it cannot be terminated by the landlord except for cause as defined in the lease and the federal regulations. It is one lease that commenced March 1, 2005 and continued until it was terminated by the Thirty (30) Day Notice of Termination and Notice to Quit on October 1, 2008. (Appendix, pp. 29-38). There has been no renewal of the Lease since March 1, 2005. Thus, at no point has Foxwell waived the past conduct of the appellant.

Even after the lease has been terminated in accordance with section 23 and while the tenant holds over during the eviction process, Section 23(d) the Lease contains an anti-waiver clause which governs the terms of said holdover:

> If the Resident stays in the unit beyond the termination date, the Landlord may begin a legal action for possession, and may enter and take possession only upon court order. Until Resident vacates the dwelling unit, all provisions of this Lease shall remain in effect, including the Resident's responsibility to pay rent and provide information concerning recertification as set forth in Paragraphs 15 and 16 of the Lease. The Landlord's request or receipt of such information or rent shall not constitute a waiver of any violation of the Lease by Resident. (Appendix, p. 19).

Thus, even after the tenant's lease is terminated and tenant remains in the premises pending eviction, the lease remains in effect and landlord's acceptance of rent "shall not constitute a waiver of ***any***

***36** *violation* of the Lease by Resident". (Emphasis added).

Thus, the appellant's argument that the lease is renewed on a monthly basis thereby waiving all previous lease violations is contrary to legal reasoning of Justice Fritzsche cited above, the lease and regulatory language that the lease continues unless the landlord has cause to terminate it and the plain meaning of the language in Section 2 which states that the will continue for successive terms of one month each. It is one continuous leasehold which commenced March 1, 2005 and the landlord is entitled to terminate it for any and all lease violations after March 1, 2005.

VII. CONCLUSION

The appeal of the appellant should be denied because the appellant has failed to show that there was **abuse** of discretion, clear error of law or other prejudicial instructions or rulings at the trial level. The instruction by the trial court on the covenant of peaceful and quiet enjoyment is implied in all residential leasehold and was further contractually contained in the lease. The appellant's argument that the jury should have been instructed that the lease could only be terminated if the appellant made loud noises and disturbances with musical and television electronic equipment misconstrued the plain meaning of the lease and wrongly interpreted stand alone provisions that allowed the landlord to terminate the lease for any acts that will disturb the rights or comforts of the neighbors. The testimony of the non-residents provided helpful and corroborating testimony that gave credibility to many of the residents that testified at trial. Phil Elmo's testimony about when the appellant pretended to run him down in a crosswalk only a few feet off the premises was not prejudicial, clear error of law or an **abuse** of discretion by the trial court. The testimony of the property manager and a maintenance worker was relevant, germane and helpful to the jury. Lastly, the lease commenced March 1, 2010 and remained in continuous effect. Thus, the landlord may ***37** terminate the appellant's lease for all lease violations which occurred after March 1, 2005. Accordingly, the appeal of the appellant should be denied.

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